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QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.

By: [Signature]
Evelyn Gomez

Appl. No. : 10/563,686 Confirmation No. 8860
Applicant : J. Christopher Anderson, et al.
Filed : August 3, 2006
TC/A.U. : 1652
Examiner : Kagnev H. Gebreyesus
Docket No. : 54-000330US
Customer No. : 22798
Client Ref No.: 1001.2 B US/NOV0547P
Novartis Ref. No.: DC/4-34045

PETITION TO CORRECT PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Office of Petitions:

Request: Petitioners believe the Patent Term Adjustment (PTA) has been calculated incorrectly in the matter of Compositions of Orthogonal Lysyl-tRNA and Aminoacyl-tRNA Synthetase Pairs and Uses Thereof (10/563,686, now U.S. patent 7,638,297).

It appears the Patent Office has incorrectly deemed the Patent Office 35 USC 154(b)(A) delay in a reply Office Action (mailed 3/16/09) to "overlap" with the 35 USC 154(b)(B) delay of patent issue after the 3-year date (8/3/09). However, the part "A" delay in reply is not properly considered to overlap the part "B" delay in issuance, according to the controlling case law of *Wyeth v. Kappos*, No. 2009-1120 (Fed. Circ. Jan 7, 2010; hereafter *Wyeth*).

Petitioners respectfully request the PTA be adjusted to 289 days.

Controlling Law: Controlling case law of *Wyeth* (see page 5 of decision) confirms that the PTA must be calculated as follows:

PTA = 35 USC 154(b)(A) delay + 35 USC 154(b)(B) delay - A/B overlap - Applicant delay

Wyeth holds that 35 USC 154(b)(B) delay can not "start running until three years after the application is filed." Page 8, emphasis not added.

Application of Facts: It appears that the PTA calculation of the Patent Office erred at least in considering the "A" delay in Patent Office reply to the first Petitioner Response to be "overlap" their "B" delay issuing beyond three years from initial filing.

Here, "A" delay comprises delay of the first Office Action beyond 14 months of initial filing (10/3/07 to 5/7/08 - 117 days), plus Office delay in replying more than 4 months after the first Response (64 days delay).

"B" delay to includes the delay in issuance beyond 3 years after the initial filing date (8/3/09 to 12/29/09 - 148 days).

Because "A" delay ended with the late Office Action of 3/16/09, there is no overlap with the "B" delay that began on 8/3/09. Therefore, A/B overlap is zero.

The RCE of 7/2/09 may be considered to start an "Applicant delay" until the 8/11/09 Notice of Allowance (40 days)

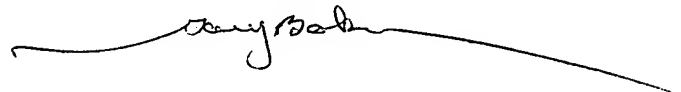
Therefore, the PTA for U.S. patent 7,638,297, should be:

$$181 \text{ "A" days} + 148 \text{ "B" days} - 0 \text{ Overlap days} - 40 \text{ Applicant delay days} = 289 \text{ days}$$

Petitioners request Patent Term Adjustment in this case be corrected to 289 days.

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Respectfully submitted,



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